

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

<b>Herring Broadcasting Inc., d/b/a WealthTV,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
v.	)	<b>MB Docket No. 08-214</b>
	)	<b>File No. CSR-7822-P</b>
	)	
<b>Bright House Networks, LLC</b>	)	
	)	
<b>Defendant</b>	)	

**To:** Marlene H. Dortch, Secretary  
Federal Communications Commission

**Attn:** Richard L. Sippel  
Administrative Law Judge

**BRIGHT HOUSE NETWORKS, LLC'S OBJECTIONS  
TO DOCUMENT REQUESTS SUBMITTED BY WEALTHTV**

Pursuant to 47 CFR §1.325(a)(2), Bright House Networks, LLC ("BHN") submits the following objections to the document requests of Herring Broadcasting Inc., d/b/a WealthTV ("WealthTV").

Definitions and Instructions 1

"BHN" shall mean, individually and collectively, Bright House Networks, LLC, all predecessors and successors in interest, agents, affiliated companies, assigns, parents, related entities, subsidiaries, subdivisions, divisions, offers, employees, representatives (in their individual or representative capacities), affiliates of any kind or nature, or any person or entity acting on their behalf.

BHN Objection:

BHN objects to the definition of "BHN" to the extent that it includes all "affiliated companies," "related entities" or "affiliates of any kind or nature" without specifying whether

those affiliates or entities are actually controlled by BHN. BHN does not believe that a document that is located in a facility owned and used by a “related entity” to BHN that BHN does not control, either through a majority ownership interest or contractual right, can said to be within BHN’s “custody or control.” In addition, there is the very substantial burden associated with searching for documents in a myriad of offices of entities other than BHN. A proper definition of BHN should limit “affiliated companies” and “related entities” to those that are either majority owned by BHN or for which BHN has operating control. BHN notes that this more limited definition would exclude iN DEMAND, since BHN owns less than a five percent interest in the company and has no operating control.

#### Definitions and Instructions 14

“Document” means all writings . . . on any magnetic tape, disk, hard disk, DVD, computer memory, or optical disk . . .”

#### BHN Objection

BHN objects to being required to mount and search backup media that may exist for its computer systems for such documents, on the basis that such a search is very unlikely to result in responsive documents. BHN will search its active computer systems (including file servers) and the work stations of individuals likely to have responsive documents.

#### Definitions and Instructions 17

The terms “relate,” “refer,” “reflect,” “concern,” “relating,” “referring,” “reflecting,” or “concerning” mean constituting or having some bearing on an indicated subject or mentioning the subject, even if only passing, including but not limited to, any document or communication that constitutes, evidences, contains, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, responds to, describes, involves or is in any way pertinent to that subject.

## BHN Objection

BHN objects to this use of the term “relate” as defined, because it is vague and ambiguous. BHN to use the terms “constitute(s), discuss and/or refer to” in place of “relate” so as to eliminate the possibility of any confusion regarding the nature of the documents requested.

### Definitions and Instructions 24

Each request shall be deemed to be continuing so as to require prompt supplemental production, if additional documents called for herein are obtained or discovered between the time of responding to these requests and the final disposition of this action.

## BHN Objection

BHN objects to being required to produce documents obtained after the commencement of the trial of this action. BHN objects to being required to compile a privileged document index for privileged documents created after the date of the carriage complaint filed by WealthTV in this case. The obligation to continue producing documents during, and after trial of this action – including through all appeals – is burdensome without producing any corresponding benefit. BHN proposes that its obligation to make supplemental productions end on March 1, 2009. With respect to privileged documents, WealthTV’s filing its carriage complaint in this proceeding, produced a large number of attorney-client communications and attorney work-product material that are located within “BHN,” as defined. These materials, naturally, are associated with the defense of BHN’s position in this case. It is unduly burdensome to require BHN to compile an index of these documents. BHN has no objection to providing an index for responsive documents withheld under a claim of privilege through and including the date of the complaint in this proceeding.

### Request 1

All documents referring or relating to BHN’s evaluation or consideration of carriage of WealthTV, including but not limited to documents relating to: the evaluation of WealthTV; demand for or interest in WealthTV; information regarding WealthTV provided to or known by BHN; the content of meetings or

other communications within BHN or between BHN and Herring Broadcasting regarding WealthTV; and BHN's willingness or refusal to engage in negotiations, meetings, or communications with Herring Broadcasting regarding WealthTV.

### BHN Objection

Request 1 is actually a multipart request that incorporates five separate document requests. By combining the five requests in to one, WealthTV has attempted to evade the parties' agreed-upon limit of 10 document request. BHN has no objection to producing documents which constitute, discuss or refer to BHN's evaluation or consideration of carriage of WealthTV or that discuss or refer to WealthTV generally.

### Request 2

Any direct affiliation agreements with Bright House and any national cable programming service that was not lead and signed by Time Warner.

### BHN Objection

BHN objects to this request, since the request would not lead to the discovery of any evidence relevant to this case. The complaint does not allege that BHN and WealthTV failed to come to terms of carriage; nor does it allege that WealthTV proposed terms of carriage that BHN rejected. WealthTV's claims are restricted to its contention that BHN refused to negotiate a carriage agreement, not that the parties disagreed with regard to terms of any such agreement. Accordingly, evidence of the terms of carriage in other affiliation agreements would not be relevant to any material issue in this case. In addition, program service affiliation agreements have confidentiality provisions preclude their being voluntarily produced in discovery, notwithstanding the existence of any protective order. Program Services view the terms and conditions in such contracts as highly competitively sensitive information and typically insist on the right to receive notice of any such request for their production and the opportunity to appear and argue against their production in discovery.

### Request 3

All documents that related to BHN's development, including as a participant in iN DEMAND, of and decision to launch or carry or continue to carry INHD, MOJO, Versus, The Outdoor Channel, E! and Style, including but not limited to documents relating to: BHN's internal deliberations and decision regarding the creation of, and selection of programming for, these programming services; analyses of these programming services with respect to target audience, target advertisers, viewer appeal, consumer branding appeal, actual viewership, financial stability, management ability and management track record; and BHN's internal deliberations as to transformation or rebranding or INHD into MOJO as a separate, stand-alone channel, and documents relating to monthly payment recorders, subscriber reports, and subscriber numbers, including total video subscribers, total digital subscribers, total high definition subscribers, and total number of subscribers receiving INHD and MOJO by city by month and the associated channel number along with a printout of each channel lineup from June 1, 2004 to the present by system.

### BHN Objection

First, BHN objects to the multipart nature of this request, as it appears to be an attempt to evade the parties' agreed upon limit of 10 document requests. The request incorporates six or seven different requests. As a result, it is vague and ambiguous. Second, some of the documents requested (those relating to Versus, The Outdoor Channel, E! and Style) are not relevant to the case and would not lead to the discovery of any relevant evidence. These include requests for printouts of channel line-ups for each month since June 2004 and channel numbers associated with INHD and MOJO. BHN has no ownership interest in any of the listed program services other than iN DEMAND.

### Request 4

All documents relating to the terms of carriage for INHD, MOJO, Versus, The Outdoor Channel, E! and Style by BHN or by other multichannel video programming distributions services.

### BHN Objection

Please see BHN's objection to request 3, incorporated here by reference. Also, BHN notes that it has an ownership interest only in iN DEMAND, which supplied the INHD and MOJO services.

### Request 5

All documents relating to the governance, finances and marketing of iN DEMAND, including but not limited to board and board committee structure and membership, executives, key personnel, including but not limited to budgets, profit and loss statements, balance sheets, marketing and advertising materials, and all briefing materials received by BHN as a participant in iN DEMAND or its governance structure.

### BHN Objection

BHN objects to this request as overly broad, much of which is evidence that would not be relevant nor lead to the discovery of admissible evidence. BHN would not object to production of documents relating to iN DEMAND in response to a more focused request, to the extent that such documents are in the possession, custody or control of BHN or its officers and employees.

### Request 6

All programming schedules for INHD, MOJO Versus, The Outdoor Channel, E! and Style.

### BHN Objection

BHN objects to this request as overbroad and not calculated to lead to the discovery of admissible evidence. In addition, the use of the term "programming schedules" is vague and ambiguous. Assuming the request calls for identification, on an hour-by-hour basis, for every day since January 1, 2004, of the title of the program then running, such a request does not call for the production of relevant evidence nor is it calculated to lead to the discovery of admissible

evidence. As stated above, BHN has a further objection to document requests for information about the program networks specified other than iN DEMAND and MOJO based on relevance.

Request 7

All documents relating to the decision to cancel MOJO and BHN's decision to cease carriage of MOJO and/or to iN DEMAND's decision to cease operating the channel.

BHN Objection

Subject to its objections about the use of "relate" in the Definitions and to the definition of BHN, BHN will produce responsive documents in its custody or control and in the custody or control of its officers and employees.

Request 8

All carriage agreements and related documents entered into between BHN and any unaffiliated company for carriage of a cable programming network owned by such company on BHN's cable systems during the period June 1, 2007 to present.

BHN Objection

Please see BHN's objection to request 3, incorporated here by reference.

Request 9

Documents sufficient to show Nielson or similar ratings by DMA for all entertainment-related programming networks carried on BHN's cable systems.

BHN Objection

BHN objects to the term "entertainment-related program networks" as vague and ambiguous. In addition, BHN notes that its contracts with the Nielsen preclude the disclosure and use of this kind of information by third parties. Such disclosure could subject BHN to financial penalties under the terms of its contracts with Nielsen. BHN also objects on the basis that the requested information is not relevant, nor is it calculated to lead to the discovery of

admissible evidence. BHN believes that WealthTV's audience is not measured by Nielsen, so it would not be possible to compare the size of WealthTV's audience with the size of any other program service's audience.

Request 10

All documents relating to the difference between the cost of programming and the price charged to viewers for each tier of service, including the basic digital tier and the basic high definition tiers offered in each BHN market as of June 1, 2007.

BHN Objection

BHN objects to this request as vague and ambiguous. To the extent that the request can be understood, it appears to call for irrelevant information because such information at best, might relate to the terms of carriage -- an issue not presently in dispute -- (see objection to Request No. 3, incorporated herein by reference.)

**BRIGHT HOUSE NETWORKS, LLC**



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Dated: December 15, 2008

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## CERTIFICATE OF SERVICE

I, Sabrina Carter, a secretary at the law firm of Fleischman and Harding LLP, hereby certify that copies of the foregoing "Objections" were served this 15th day of December, 2008, via email, upon the following:

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